

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte BRUCE R. CONLEY, ANTHONY J. FALOTICO,  
LOUIS R. MAZZOLA, and HERMAN L. MARDER

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Appeal No. 1997-3332  
Application No. 08/436,182

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ON BRIEF

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Before CAROFF, WARREN, and WALTZ, Administrative Patent Judges.

CAROFF, Administrative Patent Judge.

DECISION ON APPEAL

This decision on appeal relates to the final rejection of claims 1-11, all the pending claims in appellants' application.

Similar claims are under appeal in related applications 08/449,956 (Appeal No. 97-3389) and 08/522,164 (Appeal No. 97-3350).

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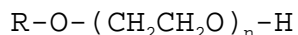
The appealed claims relate to a laundry detergent composition which includes, inter alia, a nonionic ethoxylated C<sub>10</sub>-C<sub>14</sub> alcohol surfactant and an anionic ethoxylated C<sub>10</sub>-C<sub>14</sub> alcohol sulfate salt as a second surfactant. The claimed composition is said to minimize the amount of residual undissolved detergent solids under cold water fabric laundering conditions.

Claim 1 is representative of the subject matter on appeal:

1. A powder laundry detergent composition with improved cold water residue properties, which is a granulated blend of ingredients comprising (1) between about 40-90 weight percent of a water-soluble detergent builder ingredient wherein at least one third of the detergent builder ingredient is sodium carbonate; and (2) between about 5-40 weight percent of a detergent active ingredient which is a surfactant blend comprising (a) between about 40-80 weight percent, based on the surfactant weight, of an anionic salt compound corresponding to the formula:



where R is a C<sub>10</sub>-C<sub>14</sub> alkyl group, n is an average number of ethoxylate groups between about 2-6, and M is an alkali metal or ammonium cation, and (b) between about 20-60 weight percent, based on surfactant weight, of a nonionic compound corresponding to the formula:



where R is a C<sub>10</sub>-C<sub>14</sub> alkyl group, and n is an average number of ethoxylate groups between about 2-6.

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The sole prior art reference relied upon by the examiner  
is:

|         |  |          |
|---------|--|----------|
| Mazzola | 5,443,751                              | Aug. 22, |
| 1995    |  |          |
|         | (effective filing date: March 5, 1993) |          |

The following rejections are before us for consideration:

I. Claim 11 stands rejected under 35 USC § 112, second paragraph, for indefiniteness.

II. Claim 1-11 stand rejected under 35 USC § 102(e) as being anticipated by or, in the alternative, under 35 USC § 103 for obviousness in view of Mazzola.

We have carefully considered the entire record in light of the respective positions taken by the examiner and by appellants.

Having done so, we shall affirm each of the rejections at issue essentially for the reasons presented in the examiner's Answer and Supplemental Answer. We add the following remarks for emphasis:

First, with regard to the 35 USC § 112 rejection, the examiner has found that the recitation of a tradename (Neodol 23-3) in claim 11 renders the claim indefinite. Appellants do

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not contest this finding. Accordingly, we affirm the rejection. For the record, we note that appellants have offered in their Brief to amend claim 11 in order to obviate the 35 USC § 112 rejection, and the examiner's Answer indicates that such an amendment would be accepted to obviate the rejection if the amendment were presented separately.

With regard to the prior art rejection, we affirm on the grounds of anticipation and, in the alternative, on the grounds of obviousness. As explained by the examiner, there is little question that Mazzola discloses a powder laundry detergent blend which encompasses the claimed composition with respect to both compositional components and component concentrations. In this regard, we refer to the broad teachings of Mazzola (col. 1, 1. 60 - col. 2, 1. 36) as well as Mazzola's working examples. Of course, anticipation is the epitome of obviousness.

Also, as noted by the examiner, the present claims include the open-ended term "comprising" and, thereby, do not preclude addition of other components such as the fatty acid salt coating of Mazzola.

In viewing the claims in terms of obviousness, we recognize that appellants rely upon data presented in their specification (pages 16-18; Example II), and the Mazzola Declaration filed on Nov. 2, 1995, as evidence of nonobviousness. According to appellants and the Mazzola Declaration, this evidence demonstrates that a Neodol 23-3 based surfactant blend contributes improved cold water residue properties to a carbonate-based laundry detergent in comparison with a Neodol 25-3 based surfactant blend as used in the working examples of the Mazzola patent.<sup>1</sup> However, appellants have failed to explain how they arrived at that conclusion based on the data reported in their specification on page 18 (Example II). Appellants have the burden of explaining the relevance and significance of the data presented. See In re Borkowski, 505 F.2d 713, 719, 184 USPQ 29, 33 (CCPA 1974).

Appellants have failed to explain the relevance of the data upon which they rely. As we see it, in comparative

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<sup>1</sup> According to appellants' specification (page 8 and 11), Neodol 23-3 is a mixture of ethoxylated C<sub>12</sub>-C<sub>13</sub> alcohols; whereas Neodol 25-3 is a mixture of ethoxylated C<sub>12</sub>-C<sub>15</sub> alcohols.

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Example II none of the samples listed in the Table on page 18 of the specification appear to correspond to either Neodol 23-3 or Neodol 25-3. In addition, the statement "weight percent of the undissolved solids is calculated" (page 16, l. 27-28; emphasis supplied) appears to conflict with the heading "% Dissolved" in the middle column of the Table.

Moreover, even if appellants were to clearly demonstrate unexpected results for a Neodol 23-3 blend as compared to a Neodol 25-3 blend, such a showing would not be commensurate in scope with the appealed claims (other than claim 11) which are not specifically limited to Neodol 23-3 nonionic/anionic surfactant blends based upon "a mixture of C<sub>12</sub>-C<sub>13</sub> alcohols which have an average content of three ethoxylate groups per alcohol molecule" (see appellants' specification: page 8, l. 10-12).

For the foregoing reasons, and for the reasons given by the examiner, the decision of the examiner is affirmed.

No period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

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|-----------------------------|---|-----------------|
| MARC L. CAROFF              | ) |                 |
| Administrative Patent Judge | ) |                 |
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|                             | ) | BOARD OF PATENT |
| CHARLES F. WARREN           | ) | APPEALS         |
| Administrative Patent Judge | ) | AND             |
|                             | ) | INTERFERENCES   |
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| THOMAS A. WALTZ             | ) |                 |
| Administrative Patent Judge | ) |                 |

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***Leticia***

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APJ CAROFF

APJ WARREN

APJ WALTZ

DECISION: AFFIRMED

Send Reference(s): Yes No  
or Translation (s)

Panel Change: Yes No

Index Sheet-2901 Rejection(s):

Prepared: October 16, 2001

Draft                  Final

3 MEM. CONF.    Y                  N

OB/HD                  GAU

PALM / ACTS 2 / BOOK

DISK (FOIA) / REPORT